IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1056

HAZEL RUTH LOGAN, Individually; GRADY MOSS, Individually; YELLOW JACKET MARKET, INC.; H. W. SMITH, Individually; JET STOP MARKETS, INC.; EMORY B. BAZEMORE, Individually;

Appellants,

versus

W. A. STRICKLAND, Georgia State Revenue Commissioner; ARTHUR K. BOLTON, Attorney General of the State of Georgia; ROBERT A. "BOB" DEYTON, Sheriff of Clayton County; HOWARD SMITH, Chief of Police of Clayton County; COL. J. H. COFER, Commissioner of Georgia Department of Public Safety; COUNTY OF CLAYTON; COUNTY COMMISSIONERS OF CLAYTON COUNTY;

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

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Now come Appellees, Robert A. Deyton, Howard Smith, Clayton County, and the County Commissioners of Clayton County, and through their attorneys, move this Court pursuant to Rule 16 of the Rules of the Supreme Court of the United States, to dismiss the above styled action as there exists no substantial federal question and the case has become moot.

BRIEF IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF THE CASE

On January 20, 1978, the Governor of the State of Georgia, signed into law a local act, No. 757 of the Georgia Legislature repealing the city charter of a Georgia municipality known as the City of Mountain View. Said act was submitted to the Justice Department of the United States for approval pursuant to the Voting Rights act of 1964. Appellants, certain city officials and municipal licenseholders instituted lawsuits in the Superior Court of Clayton County, Georgia, claiming that such an act violated, among other issues raised, the State and Federal Constitutions, prohibiting the impairment of the obligation of contract.

Named as defendants in the suit were various officials of the County and the Attorney-General of the State of Georgia.

On February 28, 1978, a hearing was held in the Superior Court and the constitutionality of the Act was upheld. Thereafter, the plaintiffs (now appellants) appealed to the Supreme Court of Georgia.

On September 6, 1978, the Court unanimously upheld the constitutionality of the Act and specifically held that the repeal of a municipal charter in Georgia does not operate to impair the obligation of contracts claimed under by the appellants in the action in violation of the State and Federal Constitution.

I.

APPELLANTS FAIL TO RAISE A SUBSTANTIAL FEDERAL QUESTION AS THEY RAISE ISSUES NOT PREVIOUSLY BEFORE THE SUPREME COURT OF GEORGIA AND THEREFORE BARRING REVIEW OF THIS COURT.

A motion to dismiss is proper before this Court where a federal question is not properly presented. *Pearson v. Dodd*, 429 U.S. 396, 50 L. Ed. 2d 574, 97 S. Ct. 581. Appellees contend that appellants have not presented a federal question properly.

In appellants' original complaint filed in the Superior Court of Clayton County, State of Georgia, there were raised no claims of denials of federal constitutional rights. The complaint, as to the issue of impairment of the obligation of contract, was based solely on the Georgia Constitutional provision relating to such issues. Ga. Const., Art. I, Sec. I, Par. VII (Georgia Code Ann., § 2-107). This Court has restrained from hearing a federal question where such was not raised at the trial court. *Erie R. Co. v. Purdy*, 185 U.S. 148, 46 L. Ed. 847, 22 S. Ct. 605.

Further, the Supreme Court of Georgia decided that impairment of the obligation of contract issue solely on state constitutional and not federal grounds. The decision was therefore, based on an adequate state ground which has prompted this Court to refrain from exercising jurisdiction over an appeal. *N. O. & T. P. R. Co. v. Slade*, 216 U.S. 78, 54 L. Ed. 390, 30 S. Ct. 230.

Appellants have also introduced other issues on this appeal not raised before the Georgia courts. This relates to appellants' claim that the State Legislature failed to select policy alternative to minimize the effect of aboli-

tion of the City of Mountain View upon holders of licenses. As these issues were not raised below they should be properly before this Court. *Paschall v. Christie–Stewart*, 414 U.S. 100, 38 L. Ed. 2d 298, 94 S. Ct. 313 reh den 414 U.S. 1138, 38 L. Ed. 2d 736, 94 S. Ct. 884.

Therefore, as these issues are not properly before this Court and the decision below rested on adequate state grounds, this appeal should be dismissed for want of jurisdiction.

II.

AS APPELLANTS' MUNICIPAL LICENSES HAVE EXPIRED BY THEIR TERMS THE PRESENT CONTROVERSY HAS BECOME MOOT.

All licenses, held by appellants, either alcoholic beverage licenses or grocery business licenses, and which were the subject of the litigation in the State Courts, expired on December 31, 1978. Any prior or subsequent licenses are not a proper subject of the present controversy as they were not before the trial court of the Supreme Court of Georgia.

Federal courts are without power to decide moot questions. *St. Pierre v. United States*, 319 U.S. 41, 87 L. Ed. 1199, 63 S. Ct. 910. This is nothing about the present controversy which is capable of repetition, yet evades review, because the municipal licensing power no longer exists because the municipality has been abolished.

III.

THE REPEAL OF A MUNICIPAL CHARTER WHICH INCIDENTALLY ABOLISHES THE LICENSING POWER OF THE MUNICIPALITY IS A STATE QUESTION.

Appellants contend that certain alcoholic beverage licenses they hold constitute contracts between them and the City of Mountain View. They claim the abolition of the municipality would impair the obligations of these alleged contracts in violation of the Constitution of the State. This presents no federal question but is a question of state law and interpretation of the Constitution of the State of Georgia.

It is a recognized fact that a license is not a contract within the State of Georgia. Georgia Code Ann., §20-117 provides:

> "Where, in the exercise of the police power, a license is issued, the same is not contract, but only a permission to enjoy the privilege for the time specified, on terms stated. It may be abrogated."

"Police power" is such a governmental authority as is an inherent attribute of state sovereignty. It can belong to municipal corporations only when and as conferred by the State. McQuillian, *Municipal Corporations*, Sec. 24.35, Pg. 551. The power which a municipal corporation attempts to exercise must come from the source of the state of police power, the State Legislature. *Hayes v. Town of Cedar Grove*, 126 W. Va. 828, 30 S.E. 2d 726, 732, 156 ALR 702.

The power to issue such licenses was delegated by the State to the City of Mountain View. Any power the City of Mountain View had to issue such licenses was derived from the State. In *Mayor and Council of Savannah v.*

Savannah Co., 202 Ga. 559, 43 S. E. 2d 704, the Supreme Court of Georgia stated:

> "The policy of the State in dealing with intoxicating liquors was fixed by the State law. Municipalities are bound by that law and can lawfully regulate the liquor business within their corporate limits to the extent that the law specifies." *ID* at 571.

Thus, if the State delegates this police power and the State abolishes the municipality, then the State exercises this power directly rather than indirectly through the municipalities. "A license is usually regarded as a mere privilege and not a contract, and it may be terminated by a repeal of the law under which it was granted." McQuillian, *Municipal Corporations*, Sec. 26.86, Pg. 206.

Appellants have further claimed to have vested rights which will be diminished or impaired by the General Assembly, without process or without equal protection, *City of Atlanta v. Hill*, 238 Ga. 413, 283 S. E. 2d 193 and *Hornsby v. Allen*, 326 F. 2d 605. While the Appellants may, under the opinion of such cases, now have a right to such licenses from the granting authority, so long as they meet all of such authority's requirements, they have not acquired a right greater than that granted by the municipality. A removal of the power to grant such a license by the abolition of the licensing authority does not deny the Appellants of either due process or equal protection. When the General Assembly introduced local legislation which received the constitutional majority and became law, and which has the incidental effect of revoking licenses issued by the abolished city, due process of law was adhered to. The legislative process in this case is due process.

Thus, where the power to license is repealed by the State by the repeal of a municipal charter, any licenses issued by the municipality under the delegated power are terminated by due process of law, and without any contravention of equal protection.

IV.

CONCLUSION

Appellants have failed to properly raise a federal question and the present controversy has further been mooted by the expiration of their licenses. The question of licensing power is a proper question of State law and should be decided by the state courts.

Respectfully submitted,

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